



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF J- CORP.

DATE: OCT. 14, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a business engaged in the operation of Japanese food markets, seeks approval of its proposal for an international cultural exchange program and classification of the Beneficiaries as international cultural exchange visitors. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(Q), 8 U.S.C. § 1101(a)(15)(Q). The Director, California Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner seeks to employ the Beneficiaries temporarily in the United States as Cultural Representatives for a period of 15 months. The Director denied the petition concluding that the Petitioner's program is not eligible for designation by United States Citizenship and Immigration Services (USCIS) as an international cultural exchange program under section 101(a)(15)(Q) of the Act, pursuant to the requirements set forth at 8 C.F.R. § 214.2(q)(3)(iii). Specifically, the Director determined that the Petitioner did not establish that it operates an international cultural exchange program that is accessible to the American public, that has a cultural component that is an essential and integral part of the international cultural exchange visitor's employment, or that the international exchange visitors' employment in the United States will serve as a vehicle to achieve the objectives of the cultural component, as required by the regulation at 8 C.F.R. §§ 214.2(q)(3)(iii)(A), (B), and (C).

In support of the appeal, the Petitioner submits a brief, additional evidence, and copies of previously submitted documentation. Upon review, we concur with the Director that the Petitioner has not established that its proposed program is eligible for designation by USCIS under section 101(a)(15)(Q) of the Act as an international cultural exchange program.

I. PERTINENT LAW AND REGULATIONS

Section 101(a)(15)(Q) of the Immigration and Nationality Act defines a nonimmigrant in this classification as:

an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily (for a period not to exceed 15 months) to the United States as a participant in an international cultural exchange program approved by the Secretary of Homeland Security for the purpose of providing practical training, employment, and

the sharing of the history, culture, and traditions of the country of the alien's nationality and who will be employed under the same wages and working conditions as domestic workers.

The regulation at 8 C.F.R. § 214.2(q)(3) provides:

International cultural exchange program. -- (i) *General.* A United States employer shall petition the [Secretary of Homeland Security] on Form I-129, Petition for a Nonimmigrant Worker, for approval of an international cultural exchange program which is designed to provide an opportunity for the American public to learn about foreign cultures. The United States employer must simultaneously petition on the same Form I-129 for the authorization for one or more individually identified nonimmigrant aliens to be admitted in Q-1 status. These aliens are to be admitted to engage in employment or training of which the essential element is the sharing with the American public, or a segment of the public sharing a common cultural interest, of the culture of the alien's country of nationality. The international cultural exchange visitor's eligibility for admission will be considered only if the international cultural exchange program is approved.

....

- (iii) *Requirements for program approval.* An international cultural exchange program must meet all of the following requirements:
- (A) *Accessibility to the public.* The international cultural exchange program must take place in a school, museum, business or other establishment where the American public, or a segment of the public sharing a common cultural interest, is exposed to aspects of a foreign culture as part of a structured program. Activities that take place in a private home or an isolated business setting to which the American public, or a segment of the public sharing a common cultural interest, does not have direct access do not qualify.
 - (B) *Cultural component.* The international cultural exchange program must have a cultural component which is an essential and integral part of the international cultural exchange visitor's employment or training. The cultural component must be designed, on the whole, to exhibit or explain the attitude, customs, history, heritage, philosophy, or traditions of the international cultural exchange visitor's country of nationality. A cultural component may include structured instructional activities such as seminars, courses, lecture series, or language camps.
 - (C) *Work component.* The international cultural exchange visitor's employment or training in the United States may not be independent of the cultural

(b)(6)

Matter of J- Corp.

component of the international cultural exchange program. The work component must serve as the vehicle to achieve the objectives of the cultural component. The sharing of the culture of the international cultural exchange visitor's country of nationality must result from his or her employment or training with the qualified employer in the United States.

In addition, the regulation at 8 C.F.R. § 214.2(q)(4)(i) states:

Documentation by the employer. To establish eligibility as a qualified employer, the petitioner must submit with the completed Form I-129 appropriate evidence that the employer:

- (A) Maintains an established international cultural exchange program in accordance with the requirements set forth in paragraph (q)(3) of this section;
- (B) Has designated a qualified employee as a representative who will be responsible for administering the international exchange program and who will serve as a liaison with the Immigration and Naturalization Service;
- (C) Is actively doing business in the United States;
- (D) Will offer the alien(s) wages and working conditions comparable to those accorded local domestic workers similarly employed; and
- (E) Has the financial ability to remunerate the participant(s).

II. FACTUAL AND PROCEDURAL HISTORY

A. Initial Evidence

The Petitioner operates 13 Japanese food markets in California, New York, and Hawaii and employs approximately 720 workers. It seeks to hire the Beneficiaries, both Japanese citizens, to fill the positions of Cultural Representative at two of its California stores. The Petitioner provided separate statements setting forth each of the Beneficiary's qualifications. The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on November 19, 2014, accompanied, *inter alia*, by the following supporting documentation regarding the Petitioner's cultural program:

- A supporting letter dated October 29, 2014, describing the Petitioner's internship program;
- A screenshot of the announcement of the Petitioner's cultural exchange program published on its website at [REDACTED];
- Copies of sales brochures and issues of the Petitioner's online magazine, [REDACTED] advertising its products and providing recipes for those products;

(b)(6)

Matter of J- Corp.

- Copies of photographs of various unidentified events at the Petitioner's food markets; and
- Screenshots from the Petitioner's website advertising its products, sales, online magazine, organic farm, store locations and a summer coloring contest.

The Petitioner listed the Beneficiaries' proposed hourly wage as \$10.78 on the Form I-129. The Petitioner indicated that Beneficiary [REDACTED] would work at its [REDACTED] store and Beneficiary [REDACTED] would work in [REDACTED]. In its supporting letter dated October 29, 2014, the Petitioner explained that its 13 Japanese food markets provide "traditional Japanese foods and ingredients to the American public" including "items imported directly from Japan as well as Organic farms in the [United States] and hitherto unknown and unavailable in the United States." The Petitioner emphasized that its customers are "directly exposed to the various aspects of foreign Japanese culture[,] eating customs[,] and manner th[r]ough these Japanese foods." The Petitioner stated that it currently sponsors "numerous food fairs held by the local community as well as events for the introduction to Japanese seasonal and new food products" and that it provides recipes for the preparation of Japanese specialty foods. According to the Petitioner, its community events "will be greatly enhanced by the Culture Representative's sharing a historical background and context to Japanese eating customs, manners and in-depth explanations of the foods."

The Petitioner described the cultural component of its exchange program as being designed "to exhibit and explain the attitude, customs, history, heritage, philosophy, and traditions of Japan through its food, eating customs and manners," a theme which the Petitioner explained "will be carried throughout the entire Program." The Petitioner asserted that "[i]n addition to the various staged food events, the cultural component will also be presented through the daily display and sale of regional and unique Japanese foods and recipes demonstrations." Each program participant will be issued a name badge which includes the city they are from in Japan, and the participants "will at times wear costumes representing a certain period in their region or country's history while working at [the Petitioner's food market] . . . at special cooking demonstrations, food events, fairs or festivals." The Petitioner emphasized that its program seeks "to replicate and reproduce at [its food markets], as closely as possible, the Japan food and culture experience by culturally informed employees often dressed in traditional Japanese clothing . . . to make Japanese culinary traditions accessible to people outside the culture." The Petitioner listed several facts regarding Japanese cuisine as "a very few examples of the cultural knowledge of Japan [hitherto] generally unknown" that it seeks to impart to its customers in the United States through its Cultural Representatives.

The Petitioner stated that the work component of its exchange program is "a vehicle to achieve the objectives of the cultural component as the Japanese foreign culture will be shared with the [Petitioner's] mainly American customers through the Program participants' employment." The Petitioner described the Beneficiaries anticipated duties as consisting of greeting customers, answering any product question, obtaining and weighing items, determining prices, and receiving payment. Additional duties would include stocking/restocking products, checking invoices and bills of lading, operating cash registers and maintaining the appearance of the Petitioner's food market. The Petitioner

(b)(6)

Matter of J- Corp.

asserted that “[a]s the participant will be explaining, disseminating, gathering and presenting Japanese foods and related items these duties are directly related to the Program[’]s Cultural component.”

The Petitioner explained that prior to starting work the Beneficiaries will attend a one-week orientation which will provide the following:

- An overview of American culture, including their interest in Japanese foods and buying habits;
- Opportunities to role play examples of regular customer contact to learn how to best represent Japan and its culture at the work location;
- Examples of how to elicit from customers information on American culture, its similarities, and differences with the culture of Japan; and
- Information about the Petitioner’s food business, products, and philosophy of transmitting Japanese culture, history and traditions to its customers.

The announcement of the Petitioner’s cultural exchange program from the company’s public website, [REDACTED] described the Cultural Representative Program as providing “the opportunity to share the unique culture of Japan with the Market’s American customers while working at the Market,” and requiring a candidate to “[b]e able to authentically represent a [*sic*] Japan, its people, culture, traditions, eating customs, manners, foods and recipes.”

B. Request for Evidence and Response

The Director issued a request for additional evidence (RFE) on December 9, 2014, in which she invited the Petitioner to provide additional information to establish that it operates a cultural exchange program that meets the requirements set forth at 8 C.F.R. § 214.2(q)(3)(iii), in terms of its accessibility to the public, the existence of a cultural component that is an essential and integral part of the participants’ employment, and the existence of a work component that is not independent of the cultural component of the program. The Director also requested that the Petitioner submit copies of all agreements between the Petitioner and the Beneficiaries and documentation that the Beneficiaries will receive wages and working conditions comparable to those afforded to domestic workers similarly employed in the geographical area of the Beneficiaries’ employment.

In response, the Petitioner emphasized that although its cultural representatives “will perform some sales and stock duties[,] the vast majority of their time and primary duties will be to share their history, culture and traditions of Japan with our customers.” The Petitioner affirmed that it “has a full and ample contingent of regular employees . . . and [its stores] will not use the Cultural Representatives to supplement their workforce.” The Petitioner described additional duties of the cultural representatives as including the “demonstrate[ion] and/or display [of] traditional Japanese cooking, unique cutting methods, food plate arrangements, their culinary implements, the proper use and placement of . . . plates and dishes.” In addition to weekly stated food events, the Beneficiaries would be involved with “the daily display and description of regional and unique Japanese foods.” The Petitioner confirmed that the cultural representatives will “at times wear traditional Japanese attire.” The Petitioner asserted that its

(b)(6)

Matter of J- Corp.

markets “have become in the past years, in their respective communities, culturally specific venues wherein the American public seeks us out to eat and learn more about authentic Japanese cuisine, its preparation and its origins” and the Petitioner concluded that its exchange program “will enable us to do all possible to enhance our American customer’s Japan experience.”

The Petitioner submitted additional documentation in response to the Director’s RFE including the following:

- A letter from [REDACTED] former Executive Director Japanese [REDACTED] and [REDACTED] and the [REDACTED]
- A Summary of Oral Agreement between the Petitioner and each of the Beneficiaries, dated October 1, 2014;
- A summary of the occupational position “Retail Sales Worker” from the U.S. Department of Labor’s *Occupational Outlook Handbook* from the website www.bls.gov;
- The prevailing wage for retail salespersons in the [REDACTED] California Metropolitan Division from the website www.flcdatcenter.com;
- The prevailing wage for retail salespersons in the [REDACTED] California Metropolitan Division downloaded from the website www.flcdatcenter.com; and
- The prevailing minimum wage information from the State labor department in California.

[REDACTED] stated that he carefully reviewed the Petitioner’s Cultural Program, which “deals with many aspects of Japan[,] including customs, history, traditions, food preferences, cooking methods and the serving and eating of food unique to Japan.” He briefly discussed geographical and historical influences on Japanese cuisine, and explains that Japanese foods emphasize the principles of simplicity, naturalness, elegance, and balanced qualities.” [REDACTED] affirmed that the Petitioner’s customers are “a most receptive audience and combined with the interacting of knowledgeable Cultural Representatives from Japan will successfully carry out the cultural sharing objectives of [the Petitioner’s] Cultural program.” The summaries of the Petitioner’s oral agreements with each of the Beneficiaries indicated that the Beneficiaries will be employed in the position of Cultural Representative, working approximately 32-45 hours per week at an hourly wage of \$10.78. The “primary duties” of the position are comprised of “explaining the attitude, customs, history, heritage, philosophy, and traditions of Japan through its food, eating customs and matters [sic] which includes greeting customers, answering any food, item or condiment questions, recommending foods or other food related items.” Finally, “incidental activities” of the position “may include obtaining items from shelves, freezers, coolers, bins, tables or other containers, weighing items such as produce, meat, fish, determin[ing] prices, total[ing] purchases[,] and receiv[ing] payment.”

(b)(6)

Matter of J- Corp.

C. Director's Decision and Appeal

The Director denied the petition on January 28, 2015, concluding that the Petitioner's program does not satisfy the public accessibility or cultural component requirements set forth at 8 C.F.R. § 214.2(q)(3)(iii). The Director determined that the Petitioner did not establish that its exchange program is designed, on the whole, to provide an opportunity for the American public to learn about foreign cultures. The Director acknowledged that the Petitioner's ethnic food market has "a cultural atmosphere," but found that the Petitioner's main purpose is "to operate a food market entity and sell goods to customers," with any Japanese cultural exchange being peripheral to its primary purpose. Further, the Director emphasized that the duties of the Beneficiaries' position as described by the Petitioner "appear to be those of normal retail sales workers and show no evidence that the position contains a primary cultural component," and that "any cultural exchange would be incidental to the employment."

On appeal, the Petitioner asserts that the Director did not adequately review the record, especially the letter from [REDACTED], and that such materials were sufficient to establish that it operates an international cultural exchange program that is accessible to the public and includes the required cultural component. The Petitioner relies on the regulation at 8 C.F.R. § 214.2(q)(3)(iii)(B) for the position that the Director should have focused on the cultural component of the program, rather than the position. The Petitioner emphasizes that its business, with the addition of an international cultural exchange component, is the exact combination of activities contemplated by the statute and regulations, and affirms that it works to create an authentic atmosphere and cultural experience for its customers. In support of the appeal, the Petitioner attaches its Look and Conduct Manuals, which the Petitioner describes as prescribing "strict standards of appearance, dress and comportment," applicable to program participants in interacting with members of the visiting public. These materials generally describe acceptable methods of dress, posture, smile, bow, and greeting/directing store customers.

The Petitioner states that its work component serves as a vehicle to achieve the objectives of the cultural program through specific public activities to be performed by the cultural representatives, including daily interaction with customers in discussing "primary" Japanese foods, encouraging customers to purchase lesser-known Japanese food items, explaining special foods used for festive occasions, demonstrating Japanese recipes while wearing traditional Japanese costumes, and discussing the differences in Japanese regional foods and styles of cooking. Finally, the Petitioner indicates that other Q-1 employers, such as [REDACTED] and [REDACTED] place their Q-1 participants in similar employment positions. The Petitioner attaches materials from the [REDACTED] website, and a law review article pertaining to [REDACTED] program, in support of its position that there is a strong similarity between the programs.

III. ANALYSIS

After careful review of the evidence, we concur with the Director's conclusion that the Petitioner did not show that its program qualifies for designation as an international cultural exchange program pursuant to the provisions of 8 C.F.R. § 214.2(q)(3). Specifically, the Petitioner did not establish that

the Petitioner's program constitutes a structured program that has a cultural component essential and integral to the Beneficiaries' employment or training, and that the work component serves as the vehicle to achieve the objectives of the cultural program. Here, the record supports the Director's conclusion that the Petitioner does not operate a qualifying international cultural exchange program pursuant to section 101(a)(15)(Q) of the Act. Accordingly, we will dismiss the appeal.

A. Accessibility to the Public

Pursuant to the regulation at 8 C.F.R. § 214.2(q)(3)(iii)(A), the international cultural exchange program must take place in a school, museum, business, or other establishment where the American public, or a segment of the public sharing a common cultural interest, is exposed to aspects of a foreign culture as part of a structured program. Activities that take place in a private home or an isolated business setting to which the American public, or a segment of the public sharing a common cultural interest, does not have direct access do not qualify. The Petitioner's food market is designed to offer authentic Japanese food items and is marketed to the public as such. Therefore, it is not an "isolated business setting."

In order to fully meet this requirement, however, the Petitioner must also establish that the American public, or a segment of the American public sharing a common cultural interest, is exposed to aspects of a foreign culture as part of a structured program. The Petitioner states that its cultural representatives' duties at its food markets would involve the daily display and description of regional and unique Japanese foods and weekly staged food events. The Petitioner also asserts that the duties of the Cultural Representatives at its food markets would also take place at occasional special cooking demonstrations, food events, fairs or festivals, at which the cultural representatives will wear costumes representing a certain period in their region or country's history. The Petitioner has not shown that such activities are part of a structured program.

Ultimately, most of the interactions between the food market staff and its customers are casual and unstructured. While the Petitioner has explained that it will train the Beneficiaries to engage customers, answer questions, and share some aspects of Japanese culture in order to ensure the authenticity of the experience of the Japanese food products it sells, this training does not demonstrate that the Beneficiaries would be sharing their culture with the American public as part of a structured program. Based on the record, the Petitioner's program does not fully comply with the public accessibility requirement set forth at 8 C.F.R. § 214.2(q)(3)(iii)(A), due to the lack of structured cultural activities.

B. Work and Cultural Components

The international cultural exchange program must have a cultural component which is an essential and integral part of the international cultural exchange visitor's employment or training. 8 C.F.R. § 214.2(q)(3)(iii)(B). The work component must serve as the vehicle to achieve the objectives of the cultural component. 8 C.F.R. § 214.2(q)(3)(iii)(C). We concur with the Director's determination that the duties to be performed by the Beneficiaries in their positions at the Petitioner's food market are independent of the Petitioner's proposed structured cultural program components.

(b)(6)

Matter of J- Corp.

With respect to [REDACTED] letter, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). USCIS is ultimately responsible for making the final determination regarding a beneficiary's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support that beneficiary's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). [REDACTED] explained that Japanese food is the nexus to the culture of Japan and a Japanese market offers the best atmosphere and forum for a cultural exchange. According to [REDACTED] the geographical and historical context is necessary for understanding Japanese food. While [REDACTED] has explained the importance of Japanese culture to their food, the vast majority of the interactions between the Beneficiaries and the public would be limited to informal exchanges in the course of locating and purchasing food items on a day-to-day basis. Furthermore, the Petitioner indicates that each Beneficiary will be spending an unspecified amount of time checking invoices and bills of lading, which would further limit the time they are engaged in direct contact with the public.

Upon review of the totality of the evidence, the primary purpose of the Petitioner's hiring of the Beneficiaries is to sell food items, and add to the authenticity of the experience of the Japanese food items it sells, rather than to provide a structured cultural exchange program. The cultural component must be designed, on the whole, to exhibit or explain the attitude, customs, history, heritage, philosophy, or traditions of the international cultural exchange visitor's country of nationality. 8 C.F.R. § 214.2(q)(3)(iii)(B). While, the presence of the cultural representatives may contribute to the customers' overall experience at the food market, it remains that the participants will be spending the vast majority of their time on a daily basis performing the standard duties of their positions as food market retail workers, during which periods their cultural interaction with customers will be limited to informal and unstructured cultural exchanges. The Petitioner has not established that the cultural component would be an essential and integral part of the Beneficiaries' daily employment. Daily interactions with food market customers, such as greeting customers wearing a country-specific nametag, are casual and unstructured cultural exchanges. While the Beneficiaries may occasionally wear national costumes at more structured events during the course of the program, such as handing out a recipe or preparing and presenting a seasonal dish, the record does not support a conclusion that the Beneficiaries consistently perform such duties on a day-to-day or weekly basis, while the evidence in the record confirms that the Petitioner's program participants do in fact perform the same basic job functions as "regular" food market staff.

We also acknowledge the Petitioner's assertion that the local community in which the Petitioner's food markets are located may regard the markets as an important cultural resource. The availability of authentic and affordable Japanese food items is clearly valued by the stores' patrons. However, it does not elevate the Petitioner's Japanese food market to an international cultural exchange program. While we concur with the Petitioner that its for-profit status is not disqualifying, the Petitioner is an ethnic food market engaged in the business of selling its products, and not primarily in promoting

(b)(6)

Matter of J- Corp.

cultural exchange. The Petitioner may be an active participant in the local Japanese food community and events sponsored within that community. However, the Petitioner does not operate an international cultural exchange program within the meaning of § 101(a)(15)(Q) of the Act, and it has not demonstrated that the Beneficiaries will be coming to the United States primarily to share the history, culture, and traditions of Japan.

Finally, with respect to the assertion that its exchange program is similar to the Japan pavilion at [REDACTED], operated by [REDACTED] the Petitioner operates 13 Japanese food markets. They are not businesses designed to expose the American public to a foreign culture as part of a structured program. The cultural exhibitions at [REDACTED] referred to by the Petitioner are highly structured cultural exhibitions that may sell food items as an integral part of that exhibition. Such a program is clearly distinguishable from an ethnic food market that daily displays and sells its wares and engages in weekly staged food events. Further, each petition filing is a separate proceeding with a separate record. In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). We do not have before us a Q-1 petition filed by [REDACTED] and cannot compare that organization's existing Q-1 program to the Petitioner's proposed Q-1 program. Based on the foregoing discussion, the Petitioner has not established that its cultural exchange program satisfies the cultural and work components set forth at 8 C.F.R. §§ 214.2(q)(3)(iii)(B) and (C).

IV. CONCLUSION

The Petitioner has not established that its cultural exchange program satisfies the public accessibility requirement set forth at 8 C.F.R. § 214.2(q)(3)(iii)(A), due to the lack of structured cultural activities, and the cultural and work components set forth at 8 C.F.R. §§ 214.2(q)(3)(iii)(B) and (C). Consequently, the Beneficiaries are not eligible for nonimmigrant classification under section 101(a)(15)(Q) of the Act.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of J- Corp.*, ID# 13937 (AAO Oct. 14, 2015)